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In re Application of :  
ANDERSKOUV, et al. :  
U.S. Application No.: 09/623,554 :  
PCT No.: PCT/DK99/00102 :  
International Filing Date: 03 March 1999 :  
Priority Date: 03 March 1998 :  
Attorney's Docket No.: TIDK-31636 :  
For: A METHOD IN THE COMPENSATION OF :  
UNLINEARITIES IN AN AMPLIFIER, AN :  
AMPLIFIER, AND USES OF THE METHOD :  
AND THE AMPLIFIER :

DECISION ON  
PETITION TO WITHDRAW  
HOLDING OF  
ABANDONMENT

This decision is issued in response to the "Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" filed on 15 June 2001. For reasons discussed below, the petition has additionally been treated as a petition under 37 CFR 1.181. Deposit Account No. 20-0668 has been charged the required petition fee for the petition under 37 CFR 1.137(a).

### **BACKGROUND**

On 03 March 1999, applicants filed international application PCT/DK99/00102 which claimed a priority date of 03 March 1998 and which designated the United States. On 10 September 1999, a copy of the international application was transmitted to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

A Demand was filed with the International Preliminary Examining Authority electing the United States prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the IB) and payment of the basic national fee was thirty months from the priority date, i.e., 05 September 2000 (03 September 2000 was a Sunday and 04 September 2000 was a federal holiday).

On 05 September 2000, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 12 October 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 was required. The Notification also informed applicants that the failure to submit the declaration within one month of the date of the Notification would result in abandonment of the application.

On 29 May 2001, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) stating that the application was abandoned for failure to respond to the Notification Of Missing Requirements mailed 12 October 2000.

On 15 June 2001, applicants filed the "Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" considered herein. In the petition, applicants assert that the Notification Of Missing Requirements mailed on 12 October 2000 was never received. Accompanying the petition was an executed declaration.

### **DISCUSSION**

Petitioner seeks to revive the present application under 37 CFR 1.137(a) based on unavoidable delay on the grounds that petitioner failed to receive the Notification Of Missing Requirements mailed 12 October 2000.

If applicant can establish nonreceipt of the Notification Of Missing Requirements, then the application was never abandoned. In such case, the *holding* of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP 711.03(c).

However, if applicant cannot establish nonreceipt of the Notification Of Missing Requirements, then this notice will be presumed to have been received, and the petition under 37 CFR 1.137(a) will be evaluated in light of this presumption.

#### **A. Establishing Nonreceipt of the "Notification Of Missing Requirements"**

Section 711.03(c)II of the MPEP sets forth the requirements for establishing the failure to receive an Office communication:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Here, the petition contains the required statements from the practitioner that the Notification Of Missing Requirements was not received and that a search of the file jacket and docket records indicates that the Notification Of Missing Requirements was not received.

Regarding the docket records requirement, applicants have attached copies of the docket sheet for this particular file. These docket records are not sufficient. They apply only to this particular case, and therefore do not provide evidence as to whether the Notification Of Missing Requirements was received but simply docketed under an incorrect case. Applicant must provide a copy of the docket record which sets out all the responses due in the USPTO on 13 November 2000, the date on which a response to the Notification Of Missing Requirements was due (docket records should also be supplied for Sunday, 12 November 2000, if applicants' docketing system does not automatically adjust for the fact that the one month reply date fell on a Sunday).

Because the docket sheet submitted by applicant is not adequate, applicant has not satisfied all the requirements for establishing that the Notification Of Missing Requirements was not received. Accordingly, the Notification of Abandonment mailed 29 May 2001 will not be vacated pursuant to 37 CFR 1.181, and the Notification Of Missing Requirements is presumed to have been received by applicants.

**B. Petition Under 37 CFR 1.137(a)**

A petition to revive the present application under 37 CFR 1.137(a) must include: (1) the required reply; (2) the petition fee; and (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable.

Petitioner has satisfied items (1) and (2), but has failed to satisfy item (3).

With respect to item (3), petitioner has not provided a sufficient showing that the entire delay in filing the required reply (i.e., an oath or declaration in compliance with 37 CFR 1.497) from the due date for the reply (i.e., 13 November 2000) until the filing of the present petition on 15 June 2001 was unavoidable. As indicated above, the Notification Of Missing Requirements is presumed to have been received by applicants. Having been received, applicants have not presented any evidence to show that the seven month delay in filing the declaration was unavoidable.

**CONCLUSION**

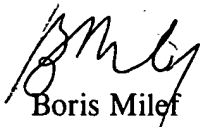
For the above reasons, the petitions under 37 CFR 1.181 and 1.137(a) are **DISMISSED** without prejudice. The application remains abandoned with respect to the United States.

Pursuant to applicants' request, a copy of the Notification Of Missing Requirements is attached hereto.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition to Under 37 CFR 1.181 [and/or 37 CFR 1.137(a), as appropriate]." No additional petition fee is required.

Alternatively, applicants may wish to consider filing a petition to revive the application under 37 CFR 1.137(b). The requirements for a petition under 37 CFR 1.137(b) are less stringent than those under 37 CFR 1.137(a), as the entire delay in filing the required reply must only have been "unintentional" rather than "unavoidable."

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to attention of the PCT Legal Office.



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enclosure: Notification Of Missing Requirements mailed 12 October 2000.